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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FWP/167964

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 12, 2015, under Wis. Admin. Code § HA 3.03(4) (\*This subprogram no longer exists.), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on September 01, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly discontinued the petitioner's FS effective August 1, 2015, because he failed to comply with work program requirements in three months.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], IMM advanced  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received FS as a one-person household. He completed his FS renewal during early April, 2015. Because his case was renewed and confirmed after April 1, 2015, he became subject to FS Employment and Training (FSET) requirements effective May 1, 2015.

3. On or about April 7, 2015, the Department issued a FoodShare Employment and Training Program (FSET) Referral letter to the petitioner informing him, among other things, that he had been referred for enrollment in FSET, and that beginning May 1, 2015, he must enroll and participate in FSET unless he established he was exempt; and that a FSET-referred person can only receive FS in three time limited benefit months in a 36 month period without participating in FSET. The letter described in detail how the referred person could meet the requirement (working 80 hours per month, or attending allowed work program activities total of 80 hours per month, and/or both working and attending allowed work program activities a total of 80 hours per month.) In addition, the letter set forth seven exemption types that could be claimed if approved by the FSET agency, i.e., living with a child under 18 years of age; caring for a person who cannot care for himself or herself; caring for a child under 6 who does not live in the home; physically or mentally unable to work; pregnant; had applied for or is receiving Unemployment Compensation benefits; or is taking part in an Alcohol or Substance Abuse (AODA) program. This letter was mailed to the petitioner's address of record. I conclude he actually received all of them.
4. Time Limited Benefits under FSET requirements were issued to the petitioner for each of the benefit months of May, June and July, 2015.
5. The petitioner failed to meet the FSET 80 hours per month of work/work program activities in any of the months of May, June, or July, 2015.
6. The petitioner was not the caretaker of a child under age 6 or the caretaker of an incapacitated individual. Petitioner did not establish that he was unable or unfit to work.
7. The Department issued a July 20, 2015 Notice of Decision to the petitioner informing him that his FS eligibility would end August 1, 2015 because he had used three months of time limited benefits without meeting a work program requirement in those three months.
8. On August 12, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals (DHA) contesting the discontinuance of his FS benefits. Benefits were not continued pending this appeal.

### **DISCUSSION**

Pursuant to a provision of Wisconsin's 2007-2009 biennial budget, Wisconsin has operated a voluntary FoodShare Employment and Training (FSET) program since 2008. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of FS benefits to three full months in a 36-month time period for Able-Bodied Adults without Dependents (ABAWDs) who do not meet the work requirement or meet an exemption from the work requirement.

#### **6.3.2 Non-Exempt ABAWD Participation Requirements**

Non-exempt ABAWDs who do not meet the ABAWD work requirement will only be allowed to receive up to three full months of FoodShare (FS) benefits in a 36-month time period. ABAWDs subject to time-limited benefits (TLBs) may choose to meet the work requirement by participating in FSET.

As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat., §49.79(10), which mandated FS eligibility and work requirements for ABAWDs to be implemented in Wisconsin beginning in 2014, consistent with federal regulations 7 CFR §273.7 and 7 CFR §273.24. The program began in Milwaukee County effective April 1, 2015, and FS recipients were required to meet the requirements beginning with the next FS review completed after April 1, 2015. *FoodShare Wisconsin Handbook*, §3.17.1.2.

Under Wis. Stat., §49.79(10), an ABAWD is required to fulfill a work requirement. If he does not fulfill the work requirement, he is limited to receiving no more than three months' FS during a three year period. The requirements are stated in the *FSET Handbook*, as follows:

### **6.3.2.1 Definition of Working for ABAWDs**

For ABAWDs, working is defined as one of the following:

- Work in exchange for money;
- Work in exchange for goods or services (in-kind);
- Unpaid work (e.g. volunteer work, community service);
- Self-employment; or
- Any combination of the above.

### **6.3.2.2 ABAWD Work Requirement**

An ABAWD is considered to be meeting the ABAWD work requirement if one of the following applies:

- Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
- Participating in and complying with the requirements of an allowable work program at least 80 hours per month; or
- Both working and participating in an allowable work program for a combined total of at least 80 hours per month.
- Participating in and complying with the requirements of a workfare program.

*FSET Handbook*, §§ 6.3.2.1 & 6.3.2.2; and see *FoodShare Wisconsin Handbook* at §3.17.1.

To meet the work requirement the ABAWD must work a minimum of 80 hours per month, participate in a work program 80 hours per month, or a combination of both for 80 hours per month. *FoodShare Wisconsin Handbook*, §3.17.1.7. The person is limited to three months of FS eligibility in which he is not meeting the 80-hour requirement and is not exempt. *Ibid.*, §3.17.1.9. FS ends after three months of failing to meet the work requirement, but eligibility can begin again if the person becomes exempt or meets the work requirement for a 30-day period (the person could reapply for FS *after* meeting the requirement for 30 days). *Ibid.*, §3.17.1.11. Among other reasons, as stated in Finding of Fact No. 3, above, a person can be exempt from the program if he is unfit for employment, that is, he is unable to work as evidenced by a statement by a health care professional or social worker. *FoodShare Wisconsin Handbook*, §3.17.1.5.

In fact, the *FSET Handbook*, at section 3.5.2, specifically states in this failure to enroll situation, as follows:

In order for a non-exempt ABAWD to meet the work requirement through FSET participation and maintain ongoing FS benefits after the TLB month, s/he must be enrolled and fully participating in FSET by the 10th day of the third TLB month. The FSET worker should document in PIN comments information relating to each contact that is attempted.

In this case, during the three month period of May through July, 2015, the Petitioner did not assert any basis for exemption to the FSET program workers. During the September 1, 2015 hearing, the petitioner for the first time alleged in vague language and without any corroboration that he had some medical

limitation. There is no such medical evidence in the hearing record. I find this testimony to be self-serving, uncorroborated, convenient, and not credible.

Petitioner did not meet the work requirement in May, June and July because he failed to meet the 80 hour per month work requirement. The hearing record indicates that petitioner worked less than 80 hours during each of the months of May, June, and July, 2015. The petitioner did not establish that he met an exemption or met the work requirement in any of the three months after the work requirement began.

Accordingly, based upon the above, I conclude that the agency correctly ended FS effective August 1, 2015 after petitioner failed to meet the work requirement for three time-limited benefit months.

As noted, petitioner can become eligible again if he meets the work requirement for a 30-day period and then reapplies. Finally, as a point of information to the petitioner about the new FSET requirements, the *FoodShare Wisconsin Handbook* provides for *regaining* FS eligibility as follows:

### **3.17.1.11 Regaining Eligibility after Exhausting 3 Months of Time-Limited Benefits**

There is no limit on how many times an ABAWD may regain eligibility after exhausting three months of TLBs. A new application is required if the ABAWD re-requests FS as an assistance group of one. If an ABAWD is requesting FS on an ongoing case, follow the person add policy to re-establish FS eligibility ([6.1.3.3](#)). ABAWDs who have exhausted three months of TLBs during a 36-month period may regain eligibility by:

1. Meeting the ABAWD work requirement for at least 30 consecutive days prior to the new FS filing date and currently meeting the work requirement, OR verifying that the work requirement will be met within 30 days of the new filing date. The work requirement can be met by:
  - Working a minimum of 80 hours in the 30-day period;
  - Participating in and complying with requirements of an allowable work program, such as Workforce Investment Act (WIA) or a Trade Adjustment Assistance Act program, for at least 80 hours in the 30-day period. FS eligibility is a required prerequisite to FSET enrollment, so an ABAWD cannot regain eligibility through FSET participation after FS closes. Keep in mind, this is only for Non-Exempt ABAWDs who have exhausted their 3 TLBs; or
  - A combination of work and participation in an allowable work program for a minimum of 80 hours in the 30-day period;
2. Currently meeting an ABAWD exemption at the time of the application and providing verification of the exemption; or
3. The ABAWD's 36-month period expires.

An ABAWD who has exhausted 3 months of TLBs and is not meeting one of the above requirements at the time of re-application is ineligible for FoodShare. If the ineligible ABAWD is a member of an open FS group, the ABAWD will be counted as a pro-rated deemer. See [4.7.5 Prorated Deeming](#).

The petitioner needs to get a job, participate in *another* allowable work (NOT FSET) program, or a combination of both for 80 hours in an immediate past month or anticipated in the next future month, with verification. He would be well-advised to contact a Miles income maintenance worker to discuss ways to regain eligibility or he will remain ineligible through the 36 month period.

### CONCLUSIONS OF LAW

The Petitioner failed to meet the FS work requirement for three time-limited benefit months in a 36 month period, and thus the agency correctly discontinued FS effective August 1, 2015, under the new time limited benefit policy for able-bodied adults without dependents.

**THEREFORE, it is**

### ORDERED

The petition for review herein be and the same is hereby Dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

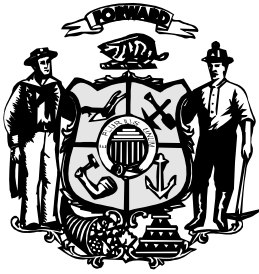
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 19th day of October, 2015

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\sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 19, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability